

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-092201

08/17/2009

HONORABLE JOSEPH KREAMER

CLERK OF THE COURT
T. Soto
Deputy

PATRICIA PATERSON

JAMES DARRELL JENKINS

v.

VALERIE VALLE

ROBERT B STANEWICH

ORDER ENTERED BY COURT

The Court has received and reviewed Defendant Valerie Valle's Motion to Dismiss, Plaintiff's Response and Defendant's Reply. The Motion argues that the Complaint should be dismissed because it was not served on Defendant Valle until 319 days after it was filed and Plaintiff failed to show due diligence or otherwise properly justify the late service.

A review of the service history of this case is important. Plaintiff's counsel initially waited until after the 120 day deadline for service had passed before seeking more time to serve. This Court, however, granted his request and gave him until January 15, 2009 to serve. Plaintiff's counsel again let the deadline pass without service. He then filed a "Certificate of Due Diligence" which did nothing more than confirm that he had not served Defendant. More than three months later, Plaintiff again sought more time to serve and this request was again granted by this Court. Pursuant to this Order, Plaintiff's counsel had until May 30, 2009 to serve Defendant by alternative means. Plaintiff's counsel missed this deadline as well, finally serving Defendant on June 8.

Plaintiff's counsel makes several arguments why he should get a fourth pass on his failure to timely serve. The Court finds none of the arguments persuasive. Difficulty in obtaining medical records, negotiations with insurers, and defendants evading service are part of

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the reality of litigation. The Court believes that the repeated failure to comply with service deadlines and the failure to even address the difficulties in service until after the time for service has run undercuts any argument that Plaintiff's counsel acted with due diligence. Further, Plaintiff's counsel's claim that he was given misinformation by the "Court Administrator's office" is unavailing. Plaintiff's counsel could have called the Court or otherwise been far more aggressive in following up on his motion – especially after already repeatedly failing to meet the service deadlines.

The Court finds that service was not timely and that there is no valid excuse for Plaintiff's counsel's failure to comply with the Court's service orders. Therefore, Defendant's Motion to Dismiss is **GRANTED**.